

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 1622 of 2020

Reserved on: 14.12.2020

Decided on: 15.12.2020

Jagdish Chand

....Petitioner

Versus

The State of H.P. & others

...Respondents

Coram

The Hon'ble Mr. Justice Chander Bhusan Barowalia, Judge.

Whether approved for reporting?¹ Yes.

(Through video conference)

For the petitioner:

Mr. Ashok Kumar Thakur, Advocate.

For the respondents/State:

Mr. S.C. Sharma, Additional Advocate
General.

Chander Bhusan Barowalia, Judge.

The matter is taken up through video conference.

2. The present bail application has been maintained by the petitioner under Section 439 of the Code of Criminal Procedure seeking his release in case FIR No. 260 of 2018, dated 01.09.2018, under Section 302 IPC read with Section 34 IPC, registered in Police Station Nurpur, District Kangra, H.P.

3. As per the averments made in the petition, the petitioner is innocent and has been falsely implicated in the present case. He is permanent resident of the place, thus neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. No

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

fruitful purpose will be served by keeping him behind the bars for an unlimited period, so he be released on bail.

4. Police reports stand filed. As per the prosecution story, on 01.09.2018 Shri Mohinder Singh (complainant) got his statement recorded with the police under Section 154 Cr.P.C., wherein he stated that on 01.09.2018, at about 07:00 a.m., he reached his shop and at about 09:00 a.m. he saw the accused persons, i.e., Jagdish Chand, Laxmi Devi and Rakesh Kumar (petitioner herein), armed with *darat* and sticks, passing through the road in front of his shop. He further stated that at that time a woman of the village had come to his shop, who informed him that his (complainant's) brother teased the daughter of Jagdish Chand, so the accused persons are looking for his brother. Subsequently, the wife of the complainant came and informed him that Niranjana Singh (deceased) was taken in a car by the accused persons towards the school, so he, alongwith others rushed to the school and found the deceased lying unconscious, in an injured state. The accused persons, including the petitioner, were present there alongwith the school staff and when they were asked as to why they gave beatings to the deceased, accused Jagdish Chand replied that the deceased teased their daughter, so they taught a lesson to him. The deceased was shifted to home and an ambulance was called, but before arrival of the ambulance, the deceased succumbed to his injuries. Thereafter, the police were informed. Police visited the spot and apt investigation

was carried-out. During the course of investigation, police prepared the spot map, clicked photographs, scientific samples were lifted and the statements of the witnesses were recorded by the police. The corpse of the deceased was sent to the local hospital for postmortem examination, however, the M.O. referred the case to RPGMC, Tanda. Upon postmortem examination, at RPGMC, Tanda, the cause of death was opined as "shock", as a result of multiple antemortem injuries caused by the blunt force impact, which is likely to cause death in ordinary course of nature. On 02.09.2018, all the accused persons, including the petitioner, were arrested. During the course of interrogation, the petitioner divulged that on 01.09.2018 he and his brother Jagdish Chand (co-accused) gave beatings to the deceased with sticks and threw the same on the spot. The petitioner got recovered the sticks and recovery memo to this effect was prepared by the police. After completion of investigation, it was unearthed that the petitioner alongwith co-accused Jagdish Chand gave beatings to the deceased with the sticks and ultimately he died. As per the police, after completion of the investigation, on 28.11.2018 *challan* was presented in the learned trial Court. Lastly, it is prayed that the bail application of the petitioner be dismissed, as the petitioner was found actively involved in committing the murder of the deceased and thus he committed a heinous crime. In case the petitioner, at this stage, is enlarged on bail, he may tamper with the prosecution evidence or flee

from justice. As the trial is in its initial stage and also considering the seriousness of the offence, the bail application of the petitioner may be dismissed.

5. I have heard the learned Counsel for the petitioner, learned Additional Advocate General for the respondents/State and gone through the records, carefully.

6. The learned Counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. He has further argued that the petitioner is neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, as he is permanent resident of the place. He has argued that no fruitful purpose will be served by keeping the petitioner behind the bars for an unlimited period, especially when investigation is complete, nothing remains to be recovered at the instance of the petitioner, custody of the petitioner is not at all required by the police and *challan* stands presented in the learned Trial Court. He has argued that the petitioner is behind the bars for the last more than two years and cannot be kept behind the bars for an unlimited period, so the bail application may be allowed and the petitioner be enlarged on bail. Conversely, the learned Additional Advocate General has argued that the petitioner has committed a heinous offence and he alongwith co-accused Jagdish Chand killed an innocent person. He has further argued that the trial is in its initial stage and in case at this stage, if the petitioner is

enlarged on bail, he may tamper with the prosecution evidence and may flee from justice. He has argued that considering the heinousness of the offence and the manner in which the same is alleged to have been committed by the petitioner alongwith his accomplice, the bail application of the petitioner be dismissed.

7. In rebuttal the learned Counsel for the petitioner has argued that the petitioner is behind the bars for the last more than two years and cannot be kept behind the bars for an unlimited period, especially when investigation is complete, nothing remains to be recovered at his instance and considering the facts that the custody of the petitioner is not at all required by the police and *challan* stands presented in the learned Trial Court, so the application be allowed and the petitioner be enlarged on bail.

8. At this stage, considering the nature of the offence, the manner in which the offence is alleged to have been committed by the petitioner, the gravity and seriousness of the offence, the fact that the trial is in its initial stage and in case, at this stage, if the petitioner is enlarged on bail, he may flee from justice or may tamper with the prosecution evidence, considering the active role played by the petitioner in the commission of the offence, which is unearthed during the course of police investigation, and also considering all other vital aspects, which emanates from the records, and without discussing the same elaborately at this stage, this Court is of the opinion that the

present is not a fit case where the judicial discretion to admit the petitioner on bail is required to be exercised in his favour.

9. In view of the foregoing discussions, the petition, which sans merits, deserves dismissal and is accordingly dismissed.

10. Needless to say that the observations made hereinabove are only confined for the adjudication of the instant petition and shall have no bearing, whatsoever, on the merits of the main case, which shall be adjudicated on its own.

15th November, 2020
(*virender*)

(Chander Bhusan Barowalia)
Judge

High Court